

UNITED STATES DISTRICT COURT

WESTERN DISTRICT OF WASHINGTON, AT SEATTLE

THE EMPLOYEES PAINTERS TRUST
HEALTH AND WELFARE FUND;
WESTERN WASHINGTON PAINTERS
DEFINED CONTRIBUTION PENSION
TRUST; DISTRICT COUNCIL NO. 5
APPRENTICESHIP AND TRAINING TRUST
FUND; WESTERN WASHINGTON
PAINTERS LABOR MANAGEMENT
COOPERATION TRUST FUND; and
INTERNATIONAL UNION OF PAINTERS
AND ALLIED TRADES, DISTRICT
COUNCIL NO. 5,

CASE NO.:

COMPLAINT

[29 U.S.C. § 185(a) and § 1132(e)]

Plaintiffs,

VS.

THE WEST CONSTRUCTION COMPANY,
INC., a Washington corporation; and JORDAN
R. WEST, an individual,

Defendants.

Plaintiffs, THE EMPLOYEES PAINTERS TRUST HEALTH AND WELFARE FUND; WESTERN WASHINGTON PAINTERS DEFINED CONTRIBUTION PENSION TRUST; DISTRICT COUNCIL NO. 5 APPRENTICESHIP AND TRAINING TRUST FUND; WESTERN WASHINGTON

**Complaint
(Case No.)**

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and
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Counsel for Plaintiffs

1 PAINTERS LABOR MANAGEMENT COOPERATION TRUST FUND; and INTERNATIONAL
2 UNION OF PAINTERS AND ALLIED TRADES, DISTRICT COUNCIL NO. 5, complain and allege
3 as follows:

4 **JURISDICTION AND VENUE**

5 1. This Court has jurisdiction over this case pursuant to § 502(e)(1) of the Employee Retirement
6 Income Security Act of 1974, as amended (“ERISA”), 29 U.S.C. § 1132(e)(1), which grants the United
7 States District Courts jurisdiction over civil actions brought by a fiduciary pursuant to § 502(a)(3) of
8 ERISA, 29 U.S.C. § 1132(a)(3), to redress violations or enforce the terms of ERISA or an employee
9 benefit plan governed by ERISA. Such jurisdiction exists without respect to the amount in controversy
10 or the citizenship of the parties, as provided in § 502(f) of ERISA, 29 U.S.C. § 1132(f).

11 2. This Court also has jurisdiction over this case pursuant to § 301(a) of the Labor Management
12 Relations Act of 1947, as amended (“LMRA”), 29 U.S.C. § 185(a), which grants the United States
13 District Courts original jurisdiction over suits for violation of contracts between an employer and a labor
14 organization in an industry affecting commerce, without respect to the amount in controversy and the
15 citizenship of the parties.

16 3. Venue is proper in this Court pursuant to § 502(e)(2) of ERISA, 29 U.S.C. § 1132(e)(2), and §
17 301(a) of the LMRA, 29 U.S.C. § 185(a), in that this is the district in which the Plaintiff Trusts (defined
18 below) are administered, the signatory union maintains union offices, and where the contractual
19 obligation is to be paid.

20 **PARTIES**

21 4. Plaintiffs are THE EMPLOYEES PAINTERS TRUST HEALTH AND WELFARE FUND;
22 WESTERN WASHINGTON PAINTERS DEFINED CONTRIBUTION PENSION TRUST; DISTRICT
23 COUNCIL NO. 5 APPRENTICESHIP AND TRAINING TRUST FUND; WESTERN WASHINGTON
24 PAINTERS LABOR MANAGEMENT COOPERATION TRUST FUND; and INTERNATIONAL
25 UNION OF PAINTERS AND ALLIED TRADES, DISTRICT COUNCIL NO. 5 (hereinafter “Trusts”).

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1 Plaintiffs are express trusts created pursuant to formal written Declarations of Trust (hereinafter "Trust
2 Agreements") between District Council 5 and various employer associations in Western Washington.
3 The Trusts were created and now exist pursuant to § 302(c) of the Labor-Management Relations Act of
4 1947, as amended 29 U.S.C. § 186(c).

5 5. At all times material herein, District Council 5 has been a labor organization representing
6 employees in the construction industry in Washington, and a labor organization representing employees
7 in an industry affecting commerce within the meaning of § 301(a) of the Labor-Management Relations
8 Act of 1947, as amended 29 U.S.C. § 185(a).

9 6. Plaintiffs, as trustees of the Trusts, are "fiduciary[ies]" with respect to the Trusts as defined in §
10 3(21)(A) of ERISA, 29 U.S.C. § 1002(21)(A).

11 7. At all times material herein, Defendant THE WEST CONSTRUCTION COMPANY, INC.
12 (hereinafter "West Construction") has been a corporation organized and existing by virtue of the laws of
13 the State of Washington and registered to conduct business in the State of Washington as a contractor.

14 8. Plaintiffs are informed, believe and thereon allege that at all times material herein, Defendant
15 Jordan West, an individual, was an officer and shareholder of West Construction and a resident of King
16 County.

17 GENERAL ALLEGATIONS

18 9. West Construction was a signatory employer to the project labor agreement that is known as The
19 City of Seattle Community Workforce Agreement. West signed a letter of assent to be bound to this
20 agreement on October 19, 2016. The letter of assent was signed for West Construction on that date by
21 Jordan West.

22 10. West Construction employees performed painting and related work on the Fire Station #32
23 project.

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11. The project labor agreement bound West Construction to pay fringe benefit contributions to the Trusts for each hour of covered work performed by West Construction's employees on the Fire Station #32 project.

12. West Construction was not bound to make fringe benefit contributions for any of its other projects not covered under the project labor agreement. Article III of the project labor agreement bound West Construction to make the fringe benefit contributions to the Plaintiff Trust Funds.

13. At all times during its performance of painting work on the Fire Station #32 project, West Construction was obligated to the terms and provisions of the Trust Agreements.

14. West Construction is an "employer," as that term is defined in the Trust Agreements.

15. West Construction is an “employer” as defined and used in Section 3(5) of ERISA, as codified at 29 U.S.C. § 1002(5), and therefore, West is “obligated to make contributions to a multi-employer plan” within the meaning of Section 515 of ERISA, as codified at 29 U.S.C. § 1145. Plaintiffs are informed and believe and thereon allege that West is also an “employer” engaged in “commerce” in an “industry affecting commerce,” as those terms are defined and used in Section 501(1) and Section 501(3) of the LMRA, as codified at 29 U.S.C. § 142(1) and § 142(3), and within the meaning and use of Section 301(a) of the LMRA, 29 U.S.C. § 185(a).

FIRST CLAIM FOR RELIEF
**(Breach of Written Project Labor Agreement and Related Trust Agreements – West
Construction)**

16. Plaintiffs hereby incorporate by reference all prior paragraphs of this Complaint, inclusive of any and all subparagraphs, to the same effect as if set forth verbatim.

17. Under the project labor agreement and trust agreements, and at all times material herein, West Construction was obligated to submit written reports to the Trusts on a timely basis showing the identity of its employees performing painting work on the Fire Station #32 project. West Construction was also required to report the number of hours worked by each of these employees. Furthermore, West Construction promised it would pay fringe benefit contributions to the Trusts on a monthly basis and at

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1 specified rates for each such hour worked by these employees. These amounts were due and payable at
2 the Trusts' administrative offices.

3 18. Under ERISA and the Trust Agreements, West Construction is required to maintain adequate
4 records of the work performed and amounts paid to its employees.

5 19. Pursuant to the project labor agreement, West Construction was required to submit Certified
6 Payroll Reports and the Affidavit of Wages Paid for the Fire Station #32 project.

7 20. According to the Certified Payroll Reports and the Affidavit of Wages Paid filed by West
8 Construction, its employees performed 941.25 hours of painting labor on the Project.

9 21. Beginning in December, 2017, the Trusts retained Lindquist, LLP to perform a payroll
10 compliance audit of West Construction, which is their right under the project labor agreement and trust
11 agreements.

12 22. West Construction refused to permit an audit of its records, which caused the Trusts to retain The
13 Urban Law Firm and Christensen, James & Martin to assist in securing the audit of West Construction's
14 records.

15 23. The Certified Payroll Reports and the Affidavit of Wages Paid filed by West Construction were
16 compared to the hours shown in reports submitted to the Trusts to determine whether the correct number
17 of hours and total contributions were paid by West Construction for the Fire Station #32 project.

18 24. West Construction failed to pay all fringe benefit contributions due for its employees' work on
19 the Fire Station #32 project.

20 25. Based on review of Certified Payroll Reports and the Affidavit of Wages Paid, West
21 Construction owed the following amounts to the Trusts for its employees' work on the Fire Station #32
22 project:

23 ///

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1 Contributions	\$12,162.16
2 Liquidated Damages	\$ 5,535.25
3 Interest	\$ 903.83
4 TOTAL:	\$18,601.24

5
6 26. Pursuant to a lien claim, the general contractor of the Fire Station #32 project paid \$7,500.00 to
7 the Trusts. Even giving credit for that payment, West Construction still owes a significant amount to the
8 Trusts.

9 27. Final demand was sent on June 27, 2018 to West Construction for the payment of the amounts it
10 owes on the Fire Station #32 project.

11 28. West Construction's attorney requested an extension until August 6, 2018 to respond to the
12 demand, which Plaintiffs' counsel granted.

13 29. On August 8, 2018, West Construction's counsel responded to state West Construction was
14 going to file amended certified payroll and affidavits of wages to reduce the number of hours on the
15 project.

16 30. Plaintiffs' counsel informed West Construction's attorney that this would not resolve all amounts
17 owed.

18 31. The time for West Construction's payment has long since passed and the time to respond to
19 demand has long since passed.

20 32. West Construction was given written notice of its non-performance and a demand to perform.
21 West Construction has failed and refused, and continues to fail and refuse, to cure the breach of its
22 obligations to the Trusts.

23 33. There is no legal excuse for West Construction's breach of the project labor agreement and
24 related trust agreements.

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1 34. As of the date of filing this complaint, West Construction is “delinquent,” as that term is used in
2 the Trust Agreements.

3 35. Under the project labor agreement and trust agreements, West Construction agreed that in the
4 event it failed to pay contributions or contract damages when due, West Construction would be
5 considered delinquent with the Trusts and would pay the Trusts the sum of \$100.00 per month or
6 twenty-percent (20%) of the total amount then due, whichever is greater, as liquidated damages for each
7 monthly delinquency.

8 36. Pursuant to the terms of the project labor agreement and Trust Agreements, West Construction
9 also promised that, in the event of any delinquency, it would pay any legal and auditing costs in
10 connection with such delinquency, whether incurred before or after litigation commenced.

11 37. Under the project labor agreement and related Trust Agreements, West Construction agreed that
12 in the event of any delinquency, it would pay the Trusts’ attorney’s fees and costs incurred in connection
13 with obtaining the cure of West Construction’s delinquency, whether incurred before or after litigation is
14 commenced.

15 38. It has been necessary for the Trusts to engage The Urban Law Firm and Christensen, James &
16 Martin for the purpose of collecting the amounts due. Pursuant to the project labor agreement and the
17 provisions of the Trust Agreements, the Trusts are entitled to their reasonable attorneys’ fees in
18 connection therewith.

19 39. Pursuant to the project labor agreement and Trust Agreements, West Construction owes the
20 Trusts interest, at the contractual rate, on all unpaid contributions from the dates the sums were
21 originally due to the Trusts to the date of judgment. Upon entry of judgment, the Trusts are entitled to
22 post-judgment interest at the highest rate allowed by law. The amount of said interest will be
23 established by proof at trial.

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2 **SECOND CLAIM FOR RELIEF**
3 **(Breach of 29 U.S.C. § 1145 – West Construction)**

4
5 40. Plaintiffs hereby incorporate by reference all prior paragraphs of this Complaint, inclusive of any
6 and all subparagraphs, to the same effect as if set forth verbatim.

7
8 41. 29 U.S.C. § 1145 provides:

9
10 Every employer who is obligated to make contributions to a multiemployer plan under
11 the terms of the plan or under the terms of a collectively bargained agreement shall, to the
12 extent not inconsistent with law, make such contributions in accordance with the terms
13 and conditions of such plan or such agreement.

14 42. The project labor agreement is a collectively bargained agreement and West Construction
15 was obligated to contribute to the Trusts pursuant to that agreement.

16 43. West Construction did not pay the contributions it was required to make to the Trusts,
17 which means it violated 29 U.S.C. § 1145.

18 44. West Construction's violation of 29 U.S.C. § 1145 entitles the Trusts to recover
19 liquidated damages, interest, and attorney's fees and costs under 29 U.S.C. § 1132(g)(2).

20
21 **THIRD CLAIM FOR RELIEF**
22 **(Breach of Written Trust Agreement – Jordan West)**

23 45. Plaintiffs hereby incorporate by reference all prior paragraphs of this Complaint, inclusive of any
24 and all subparagraphs, to the same effect as if set forth verbatim.

25 46. The project labor agreement signed by Jordan West incorporates the terms of the trust
26 agreements that govern the Trusts.

27 47. The Trust Agreement of the Employee Painters Trust Health and Welfare Fund specifically
28 states corporate principals and officers are personally liable for the payment of fringe benefit
29 contributions owed to that specific trust.

30 48. West Construction owes \$6,031.53 to the Employee Painters Trust Health and Welfare Fund for
31 its employees' work on the Fire Station #32 project.

32
33 **THE URBAN LAW FIRM**
34 and
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49. As a result of the specific language of the Trust Agreement, Jordan West owes \$6,031.53 to the Employee Painters Trust Health and Welfare Fund.

PRAAYER FOR RELIEF

WHEREFORE, Plaintiffs pray for judgment against The West Construction Company and Jordan West as follows:

1. For unpaid fringe benefit contributions in amounts as proved;
2. For damages for breach of contract in amounts as proved;
3. For liquidated damages in amounts as proved;
4. For prejudgment interest at the contractual rate;
5. For interest at the rates established by the trust agreements until paid in full;
6. For Plaintiffs' reasonable attorneys' fees;
7. For Plaintiffs' costs of suit incurred herein;
8. For such additional relief as this Court deems just and proper.

Dated: August 17, 2018

THE URBAN LAW FIRM

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